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No. 579

In the
Supreme Court of the United States
OCTOBER TERM, 1947

SAM LEE GARLAND,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

HENRY KLEPAK,
Dallas, Texas,
Counsel for Petitioner.

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Sam Lee Garland respectfully submits this motion for rehearing to review the decree of the United States Circuit Court of Appeals for the Fifth Circuit in the above entitled and numbered cause.

The statement of the case and the authorities which petitioner relies upon is set forth in the original petition for the writ of certiorari.

Your Petitioner, after reviewing the brief presented by the United States Government, is convinced that the main

issue has been evaded and that the United States Government is more desirous in emphasizing the authority for the Interstate Commerce Commission to make rules and regulations pertaining to the Broker's Act rather than the fact that the rules and regulations promulgated by the Interstate Commerce Commission are harsh, impossible of performance, and is a means of regulating petitioner and those persons who are engaged in a like and similar business out of the business they are engaged in.

The record shows that petitioner has been engaged in the particular type of business wherein he sells information to the public generally and by doing so, permits persons to arrange between themselves a share-expense travel.

The rules and regulations are such that if petitioner could, with the help of the goddess of fate, procure a so-called broker's license, it would be incumbent upon him to do two things. One, to change his business whereby he could sell transportation, and not information, for licensed motor carriers such as bus lines, railroads, and airlines; Two, he would then be compelled to make a bond through some responsible bonding company to indemnify the public generally against property loss, personal injury, loss of time, or for whatever reason a cause of action might arise between the owner of the motor vehicle and the share expense traveler.

The evidence in this case discloses that petitioner, or any other person, could not procure a bond of this kind because such bonds are available only to the owners of the motor vehicle and those who have control over its operations and

its destinations. The evidence is undisputed that Petitioner has no control over the motor vehicle. Therefore, such bond is impossible of making. The mere failure to provide such a bond would prevent Petitioner from engaging in his business under his broker's license, if he had such a license. Certainly the Court can see that the rule and regulation is not just, it is wholly unreasonable and impossible of performance. Your Petitioner further says that the qualification under the rule and regulation of the broker's license is strange within itself. First, the Court must bear in mind that Petitioner's business is a unique business in that it does not sell transportation, there is no schedule of departures or arrivals of motor vehicles, the same persons so traveling may never again arrange share expense travel with other persons through Petitioner's business. The evidence discloses that they are simply traveling people who are desirous of making trips for business or for pleasure, who are desirous of having persons either share the expense of travel or of having someone as a companion for travel. These persons are known as casual, occasional and reciprocal travelers. The time of departure, the costs of expense of travel, the destination of travel, is all arranged between the owner of the motor vehicle and those desiring to share the expense of travel. Now, presuming that Petitioner were able to procure the broker's license and was able to execute a bond as required by the rules and regulations, the rules further provide that Petitioner, under a broker's license, can only arrange transportation for licensed motor carriers, persons who are engaged in hauling passengers for hire, but this is not the business in which Petitioner is engaged.

Does it mean that an American Citizen must change the conduct of his business in order to please the Interstate Commerce Commission, and then if he did procure such license and make such bond, then be restricted to engaging in a business wholly foreign to his ordinary course of business of selling information to persons who are desirous of getting together for share expense travel. Your Petitioner cannot see that this makes common sense.

It is unreasonable to presume that a lawyer who is licensed could be restricted to represent certain clients. It is equally unreasonable for a Doctor who is licensed to be permitted to treat only certain patients, and it is certainly more unreasonable to say to a Doctor who is a graduate and holds a degree of medicine, that he can only treat animals. The restrictions created by the rules and regulations are so unreasonable and so inapplicable to the true situation, that it does not make sense.

Presuming that this Court believes that Petitioner is, in truth and in fact, selling transportation to the casual, occasional and reciprocal traveler, and the broker's act compelled Petitioner to have a broker's license, but upon the procurement of such license Petitioner would not be permitted to any longer engage in the sale of transportation for the casual, occasional and reciprocal traveler. Even in such an instance, would this not constitute confiscation of property without due process of law? Is not Petitioner deprived in engaging in what is already a lawful business?

The attorneys for the United States Government, in their brief, tell the Court that the cases cited by Petitioner

wherein the Court of Criminal Appeals of Texas held that no bureau, agency, or government, or by legislative act, had a right to interfere with a lawful business, but the attorneys for the Government, tell the Court that that only applied to certain laws passed by the Legislature of Texas, but the attorneys for the Government do not tell the Court that that very same statute, which was held unconstitutional by the appellate court of Texas, has embodied within its law, fundamentally and essentially the same and exact conditions which are created by the rules and regulations promulgated by the Interstate Commerce Commission. The Court must remember that the evidence discloses that Petitioner had three places of business, with employees in each place of business, and that, in truth, a sizeable amount of business was conducted through these offices. The Court can well recognize that the locations involved improvements, furniture and fixtures, leases, pay-roll, and the general and ordinary expenses which are created by business. Petitioner testified that he had engaged in such businesses for a long period of time and then to permit the Interstate Commerce Commission to pass rules and regulations which would, in effect, close all of Petitioner's businesses, which could result in only great financial losses, without Petitioner having some recourse, is certainly inequitable.

Petitioner does not rebel at the idea of having to be licensed. He welcomes the Government's right to license his business and other businesses of the same kind and character but when the procurement of such license means the destruction and the elimination of the business engaged in, certainly no individual would submit to such a license.

Presuming further, that the Petitioner had such a license, what assurance is given Petitioner that busses, railroads and airlines would permit him to engage in the sale of transportation for them? He has none.

As far as the regulations are concerned, it appears that the Interstate Commerce Commission is directly satisfied that people might advertise in the newspapers and get together and travel on the share expense plan, but if such persons are brought together by a third person, the brand of "broker" is placed upon the third person and he is then prohibited from assisting two citizens who are desirous of getting together for share expense travel and certainly discrimination rears its ugly head for, in truth and in fact, the Interstate Commerce Commission attempts to prohibit American Citizens from engaging in a business which would not be injurious to the public generally and which certainly is not a violation of the law.

The Act, within itself, may be a lawful act, but the Interstate Commerce Commission places a burden upon that third person and says that the said third person shall not assist others in meeting to arrange for share expense travel without procuring a license from the Interstate Commerce Commission and says, at the same time, that if you get such a license, you will not be able to sell information to persons who are casual, occasional and reciprocal travelers but you must confine all your efforts to selling transportation on bus lines, railroads, and airlines.

It is true that an attorney can sometimes become overly zealous and because of his client's interest, fail to see the

reasonableness of the adverse party's position. In the instant case, however, if Petitioner, after procuring a brokers license and qualifying for the making of his bond, and complying with the rules and regulations of the Interstate Commerce Commission could continue to engage in a like and similar business, no complaint would be made, but when the law, or a rule or regulation tells an American citizen that he must change the business that he is engaged in simply to meet the rules and regulations which are promulgated by the Interstate Commerce Commission, then all reasonableness is gone. Where does Government regulation stop? How far can it go? Can it force an American Citizen to engage in a business in which he does not desire to engage?

How can a man be guilty of violating a law for not having a broker's license when a broker's license is a regulation to engage in the sale of transportation for licensed motor carriers? How can Petitioner be guilty of violating the broker's act if he sold information to the casual, occasional and reciprocal travelers who are not licensed motor carriers. There is no evidence that Petitioner owns the motor vehicles and is hauling passengers for hire. There is no argument on that point at all. If Petitioner had engaged in such acts he certainly had violated the Motor Transportation Act, but that is not the fact of this case. The evidence is very clear that Petitioner did not and does not own any of the motor vehicles in question, he had no control over their destination, he had no control over the financial agreement made between the parties, he only introduced one party to another and permitted them to make their own arrangements.

Presuming that the Interstate Commerce Commission had a right to remove the exemption of the casual, occasional and reciprocal traveler, when such exemption was removed, if it was removed, it only provided that if the casual, occasional and reciprocal traveler was brought together by a third person that that third person would have to have a license and if the third person had such a license he could only arrange transportation for licensed motor carriers.

Your Petitioner has sought, by this argument, to convey the actual facts as they are, and how they effect Petitioner. The Act, on its face, may appear reasonable, but it is impossible of performance. It certainly does not carry the conditions for which the rules intended.

Your Petitioner presumes that the Interstate Commerce Commission wanted to license the third party. That is certainly permissible. There is a great deal of difference between issuing a license and putting a man out of business. This Court might very easily say that if you cannot meet the terms and conditions of your license then you should not engage in such business. Ordinarily that would be correct but the facts are so different in this case. It is not a question of not being able to comply with the rules and regulations if petitioner had been engaged in selling transportation for licensed motor carriers. If he had it would be very easy to comply with the rules and regulations of the Interstate Commerce Commission but Petitioner had never sold or arranged transportation for licensed motor carriers, his business was solely one of selling information to casual, occasional and reciprocal travelers. The rules

and regulations were not applicable to his type of business and, therefore, he could not be guilty in failing to have a brokers license for the brokers license did not govern the type of business in which he was engaged.

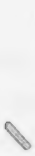
PRAYER

WHEREFORE, your Petitioner respectfully prays that the Motion for Rehearing in all things be granted and that Petitioner's application for writ of certiorari issue under the seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the Circuit Court of Appeals had in said cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Statutes of the United States; and that the judgment herein of the said Circuit Court of Appeals be reversed by this Honorable Court, and for such other and further relief as to this Court may seem proper.

Respectfully submitted,

HENRY KLEPAK,
Dallas, Texas,
Counsel for Petitioner.

Copies of this brief have been mailed to Philip B. Perlman, Solicitor General, John F. Sonnett, Assistant Attorney General, Edward Dumbauld, Special Assistant to the Attorney General, James A. Murray and Leo H. Pou, Attorneys, Interstate Commerce Commission.



STATE OF TEXAS)
COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, on this day personally appeared Henry Klepak, and after by me being duly sworn, states upon his oath that he is the attorney of Record for the Petitioner in the above styled and numbered cause, and that he has presented the Motion for Rehearing in good faith and that same is not presented for the purpose of delay.

HENRY KLEPAK,
Dallas, Texas,
Counsel for Petitioner.

SWORN TO AND SUBSCRIBED before me on this the ..... day of April, A. D., 1948.

.....
Notary Public in and for
Dallas County, Texas.